

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: August 3, 2009

PLACE: Andrew Johnson Tower – 2nd Floor Conference Room
710 James Robertson Parkway
Nashville, Tennessee

PRESENT: Commission Members:
Marvin Alexander, Chairman
Bobby Colson
Kenneth Dreaden
Mary Francis Rudy

PRESENT: Staff Members:
Donna Hancock, Director
Kathryn Wiseman, Chief Counsel for Regulatory Boards
Adrian Chick, Staff Attorney
Judy Elmore, Administrative Regulatory Board Assistant 3

ABSENT: Commission Members:
Howard Phillips, Vice-Chairman

CALL TO ORDER:

Chairman Alexander called the meeting to order at 9:00 a.m. and the following business was transacted:

Donna Hancock called the roll. Four Commission members were present and one was absent.

Ms. Hancock noted a change to the agenda stating that the Nashville Auction School would not have a member present but had submitted a written report to be submitted on their behalf.

AGENDA: Ms. Rudy made a motion adopt the agenda, seconded by Mr. Colson. **MOTION CARRIED.**

MINUTES: Mr. Dreaden made a motion to approve the minutes of the last meeting, seconded by Mr. Colson. **MOTION CARRIED.**

LEGAL REPORT - ADRIAN CHICK, STAFF ATTORNEY

Mr. Chick advised that the formal hearing scheduled for Nashville Power Sport Auction had been cancelled pending an agreed order. The agreed order would revoke the firm's license and the auctioneer's license would be placed on a one-(1) year suspension. Mr. Chick advised that he would present the agreed order to Chairman Alexander for his signature after the break upon the Commission's approval.

MOTION: Mr. Colson made motion to accept legal recommendation, seconded by Ms. Rudy. ALL APPROVED. MOTION CARRIED.

1. L09-AUC-RBS-2009003921

2. L09-AUC-RBS-2009003931

Complaint: These complaints were opened because it appeared that the Respondents may have been acting as an auctioneer and auction firm with regard to real estate without also being licensed as a broker. The auctioneer does in fact hold licenses as both auctioneer and real estate broker.

Recommendation: Dismiss.

MOTION: Ms. Rudy made motion to accept legal recommendation, seconded by Mr. Dreaden.

ALL APPROVED. MOTION CARRIED.

3. L09-AUC-RBS-2009005341

Complaint: This complaint arises out of a real property and personal property auction held on November, 2, 2008 which included the sale of three parcels of land. The auction was subject to seller confirmation. Each property would be offered separately, the bids held, and then the three combined properties + 5% offered. The complainant alleges that a high bid of \$514,000 for all three parcels was obtained on the real property, but that the auction team "knowingly allowed the high bidder to leave the auction sale without contracting the sale and without collecting the \$30,000 in non-refundable security deposit..." The complainant was subsequently charged a "no-sale" advertising fee which the auction company deducted from proceeds from the personal property sale.

The complainant further alleges that the auction company, although authorized to quote a package price for all three parcels, quoted prices for the individual parcels to a realtor prior to the sale. "These unauthorized communications by the (Respondent) auction team led (the Realtor's) party to become confused and disinterested..."

The complainant further alleges that the auction team had the property listed in the MLS with an expiration date of January 2, 2009, but changed it to an "expired" status as of January 2, 2009 without complainant's permission.

The complainant further alleges that the auction team failed to provide documentation to the complainant in a timely manner, and that some documentation had still not been provided as of the filing of this complaint.

The complainant further alleges that the auction team failed to rectify their failure to conduct a proper auction during a subsequent conference.

The complainant further alleges that the "Contract for Auction Employment" and the "Settlement Statement for Personal Items Sold" were signed by different persons.

Response: The Respondent states that individual bids of \$30k, \$25k and \$385k were received for the two lots and the residence, respectively, and that these bids were held and then the three properties were offered together at a 5% increase. A bidder bid this amount (\$462,200). However, the seller did not confirm this amount, and instead stated he'd accept \$500k. Before the auction team could relay this back to the bidder, the bidder was gone. The bidder later stated he was having a heart attack, had judgments against him, and should not have bid.

Complaint History: none related.

Recommendation: Dismiss. No violation of statutes or rules.

MOTION: Mr. Dreaden made motion to accept legal recommendation, seconded by Mr. Colson.

ALL APPROVED. MOTION CARRIED.

4. L09-AUC-RBS-2009006461

Complaint: This complaint was filed by a person who participated in an absolute auction via the internet. The complainant states that the Respondent auction firm withdrew lots from the sale after the complainant had placed bids on the items. The complainant states that they were subsequently sold for a higher price.

Response: The Respondent denies withdrawing any items and states that all lots could not be offered at the first auction, and a second auction was held the following week. The Respondent states that none of the items sold at the second auction had been offered at the first auction.

Complaint History: None related.

Recommendation: Dismiss. No violation.

MOTION: Mr. Alexander recused himself. Mr. Colson made motion to accept legal recommendation, seconded by Ms. Rudy.
ALL APPROVED. MOTION CARRIED.

5. L08-AUC-RBS-2009006471

Complaint: The complainant alleges that he provided a work truck to be auctioned by Respondent auction company and stated a reserve price of \$2,000, but the truck was auctioned for \$1,700. The complainant states that the Respondent asked whether he wanted a reserve, and the complainant stated he wanted a reserve of \$2,000. The contract, under "Property to be sold", states, "'87 Volvo Van Truck - 2000 sell".

9. Owner agrees to sell the property and to deliver title to the Purchaser by appropriate documents free and clear of all encumbrances. Respondent assumes no responsibility to protect Owner's reserve price: any reserve bidding is sole responsibility of Owner.

Response: The Respondent states that the \$2,000 notation reflects only the target amount, and that the complainant instructed the Respondent to sell the truck even if this target was not met.

Recommendation: Consent Order assessing civil penalty of \$600.00 for violation of 62-19-112(b)(12), and authorization for hearing.

MOTION: Ms. Rudy made motion to accept legal recommendation, seconded by Mr. Colson.
Roll Call Vote: Colson-No; Dreaden-No; Rudy-Yes; Alexander-No.
MOTION FAILED.

MOTION: Mr. Dreaden made motion to issue a letter of instruction to the business that this is a gray area and he needs to clarify his contracts, seconded by Mr. Colson.
ALL APPROVED. MOTION CARRIED.

6. L09-AUC-RBS-2009006491

Complaint: This complaint was filed by a property owner who alleges that the Respondent firm trespassed upon her land by placing a sign for an auction. The complainant demanded that the sign be taken down within thirty minutes or she would call police. The Respondent's auctioneer called the complainant a derogatory name.

Response: Respondent states he repeatedly apologized and told her he'd take down the sign, which he did, and out of frustration made a derogatory remark. He apologizes for the remark, and states it was made out of frustration.

Complaint History: none related.

Recommendation: Close with Letter of Caution regarding placement of signs and remarks to public.

MOTION: Ms. Rudy made motion to accept legal recommendation, seconded by Mr. Dreaden.

ALL APPROVED. MOTION CARRIED.

7. L09-AUC-RBS-2009006501

Complaint: This complaint was filed by former property owners who had hired Respondent to sell their property at auction. The contract states a reserve price of \$250,000. The complainants state that prior to start of the auction, they indicated that they wanted to "see where the bids get to" before making a conclusion as to whether or not to accept the highest bid. The complainants state that the Respondent employed a false bidder to bid \$225,000.

Response: The Respondent states that the understanding, according to contract, was that the auction would be with a \$250,000 reserve. The Respondent further points out that the conversation with the seller regarding the reserve took place less than an hour before the sale, and that by contract, changes to the reserve could only be made "up to" an hour before the sale. The property subsequently was sold and closed for \$235,000.

Complaint History: none.

Recommendation: Dismiss.

MOTION: Mr. Colson made motion to accept legal recommendation, seconded by Mr. Dreaden.

ALL APPROVED. MOTION CARRIED.

8. L09-AUC-RBS-2009008241

Complaint: This complaint alleges that the Respondent is conducting auctions without a licensed auctioneer at a self storage facility. The Notices state "Notice of Public Auction - The following storage rooms will be sold for non-payment of rent in accordance with state law...."

Response: The Respondent states the goods were not acquired for resell.

Complaint History: none.

Recommendation: Dismiss. Tenn. Code Ann. § 62-19-103(5) exempts "any person performing acts in the regular course of, or as an incident to, the management of, and investment in, property

owned or leased by such person, if such property was not acquired for the purpose of resale." See also, Tenn. Code Ann. § 66-31-101 et seq. (Tennessee Self-Service Storage Facility Act).

MOTION: Ms. Rudy made motion to accept legal recommendation, seconded by Mr. Colson. ALL APPROVED. MOTION CARRIED.

DIRECTOR'S REPORT – DONNA HANCOCK

Education Course Provider Review:

Upper Cumberland Association of Realtors (UCAR) submitted five (5) courses for review and approval. Colleen Edwards was present to discuss the curriculum.

MOTION: Ms. Rudy made motion to approve applications, seconded by Mr. Colson. ALL APPROVED. MOTION CARRIED.

Ms. Hancock advised the Commission that she would continue to present education course provider applications to the Commission for their review and approval unless instructed differently. The members agreed.

Auctioneer Application Review:

Raymond Miller submitted an application to reapply for an auctioneer license and was present to request that the testing requirement be waived. This matter was deferred until later in the meeting to allow legal personnel to research the statutory requirements.

Gallery Application Review:

Dixie Auctions submitted an application for a gallery application. Ms. Hancock presented application and supporting documentation for Commission's review because the applicant indicated he is currently involved in a civil suit.

MOTION: Ms. Rudy made motion to ask applicant to provide the Commission with the court order and any documentation that he may have indicating he has been cleared of the charges, seconded by Mr. Dreaden. ALL APPROVED. MOTION CARRIED.

Ms. Wiseman returned to the meeting and addressed the Commission regarding her legal research regarding the authority the Commission has to waive any requirements to reapply for an expired license. It was determined that licensees have a sixty-(60) day grace period to renew their license with penalty. The Commission may reinstate a license upon receiving written submission and the appropriate fees/penalties as outlined in the rules after a license has been expired for sixty-(60) days and no more than two-(2) years. The Commission may also waive any testing or education requirements during that time. These requirements cannot be waived by the Commission after a license has been expired more than two-(2) years. Any applicant whose license has been expired more than two-(2) years, must reapply for the license and complete any required examinations or education.

Raymond Miller's auctioneer application was reintroduced for discussion.

MOTION: Ms. Rudy absent from meeting from this point forward and was not present to vote. Mr. Colson made a motion to not approve the application based on Legal's advice that

the Commission does not have the discretion to waive the education and exam requirements in this case, seconded by Mr. Dreaden.

ALL APPROVED. MOTION CARRIED.

Mr. Miller was advised that his application would be approved upon receipt of the appropriate fees and proof that he has retested and passed the examination for an auctioneer.

Firm Application Review:

Frederick Kim Stone submitted an email advising that his firm license had expired and requested that the Commission waive the need for him to retest. The Commission advised that Mr. Stone has a current auctioneer license, therefore he is not required to take a firm examination. They further advised that only a firm owner that is not an auctioneer is required to take a firm examination. Ms. Hancock advised that she will notify Mr. Stone of their decision.

Auctioneer Application Review:

Radley Lockmiller submitted a request that his license be reinstated and that any examination requirements be waived. His auctioneer license expired January 7, 2009. It was determined that he would not be required to take an exam as the application has not been expired more than two-(2) years.

MOTION: Mr. Colson made motion to approve application upon receipt of the appropriate fees including any required penalties, seconded by Mr. Dreaden.

ALL APPROVED. MOTION CARRIED.

Michael Wilkins submitted a request that his license be reinstated and that any examination requirements be waived. His auctioneer license expired July 31, 2005. It was determined that he would need to reapply and would be required to retest.

MOTION: Mr. Colson made a motion to issue a license upon his reapplication, completion of required continuing education and passing of the examination, seconded by Mr. Dreaden.

ALL APPROVED. MOTION CARRIED.

NASHVILLE AUCTION SCHOOL (NAS) – Donna Hancock

Ms. Hancock advised that a representative from Nashville Auction School could not attend meeting, therefore she would read Rhessa Orr's letter for the record:

"Donna, neither Wendell nor I will be able to attend the Commission meeting this morning. Our report is very simple. The next seminar is scheduled for September 24th at Fairfield Glade Conference Center. The speaker will be Randy Wells with CAI from Post Falls, Idaho. He is the past President of the National Auctioneer Association and has instructed in the Certified Auctioneer Institute's program. The next newsletter is scheduled for delivery on September 15th. We welcome suggestions and input from the board on topics for this newsletter. I'll need the letter from the Chairman no later than August 14th in order to get the newsletter out on time. If a new Chairman is elected today, please let me know so I may contact them regarding their letter."

LEGAL DISCUSSION – Adrian Chick, General Counsel

Chairman Alexander asked Mr. Chick if there are any civil penalties that have not been received. Mr. Chick advised "no" but there are two that have been received and the one that was assessed earlier in the meeting.

The Commission discussed the following definitions, rules and laws that are considered to be gray areas that they would like to address in the future:

The Commission discussed the reciprocal requirements and that in the past we have not allowed states to reciprocate that do not have apprentice requirements. Chairman Alexander advised that the Commission may want to reconsider any reciprocity agreements if a state eliminates their apprenticeship requirements.

The term “principal auctioneer” was briefly discussed and Chairman Alexander advised that it needs to be clarified.

The Commission discussed when an escrow account is required. It was determined that all auction firms are required to have an escrow account. Ms. Hancock advised that the office has not been requiring escrow accounts from public automobile auctions. Mr. Chick stated that one question that had come to his attention was regarding what state an escrow account should be held in. He advised that he would review the historical statutes for any references.

Ms. Hancock raised the question as to whether or not a gallery would be required to have a public automobile auction license if it sells vehicles to another dealer and not the public.

Chairman Alexander stated that he would like to address possible licensing and regulation of Internet auctions that operate in Tennessee.

Chairman Alexander advised that he recently attended the National Auctioneers Licensing Law Officials Association (NALLOA) meeting. He shared a copy of the comparisons of what is regulated in each state that was distributed at the meeting. Mr. Colson advised that Chairman Alexander was recognized at the meeting and was inducted into the NALLOA Hall of Fame. Staff and fellow Commission members congratulated Chairman Alexander.

Being no further business, meeting adjourned.

Marvin Alexander, Chairman

Mary Francis Rudy

Howard Phillips, Vice Chairman

Kenneth Dreaden

Bobby Colson